

# State of Alaska

## ETHICS INFORMATION FOR PUBLIC EMPLOYEES (AS 39.52)

### INTRODUCTION

This is an introduction to AS 39.52, the *Alaska Executive Branch Ethics Act*. This guide is not a substitute for reading the law and its regulations. State employees who have further questions should contact the "designated ethics supervisor" in their agency.

The Ethics Act applies to all *current and former executive branch public employees* and members of statutorily created boards and commissions.

### SCOPE OF ETHICS ACT (AS 39.52.110)

Service in a public office is a public trust. The Ethics Act prohibits substantial and material conflicts of interest. Further, public employees cannot improperly benefit financially or personally from their actions as public employees. The Act does not, however, discourage independent pursuits and it recognizes that minor and inconsequential conflicts of interest are unavoidable.

### MISUSE OF OFFICIAL POSITION (AS 39.52.120)

Public employees may not use their positions for personal gain or to give an unwarranted benefit or treatment to any person. For example, public employees may not:

- ♦ use their official positions to secure employment or contracts;
- ♦ accept compensation from anyone other than the State for performing official duties;
- ♦ use State time, equipment, property or facilities for their own personal or financial benefit or for partisan political purposes;

- ♦ take or withhold official action on a matter in which they have a personal or financial interest; or
- ♦ coerce subordinates for his/her personal or financial benefit.
- ♦ attempt to influence outcome of an administrative hearing by privately contacting the hearing officer.



Bob uses the phone each day to make a brief call to check on his children at the babysitter.



Megan regularly reads the Wall Street Journal at the office to learn about her investments and often calls her stockbroker during work hours.



Russ chairs his local symphony board. Russ asks his secretary at his State job to type board letters and reports.



Pat's live-in friend, Sandy, is applying for a State loan. Although Sandy has been out of work for months, Pat knows that Sandy is good for the loan. Pat lets the State loan examiner who works for Pat know that there had better be no trouble with the loan.



Darlene made copies of political campaign advertising for her legislative candidate on a State copier after work hours.



Elizabeth called her friend twice in Florida last month from her State phone. She did not bill the call to her personal phone number.

### IMPROPER GIFTS (AS 39.52.130)

A public employee may not solicit or accept gifts if it could reasonably be inferred that the gift is intended to influence the public employee's action or judgment. "Gifts" include money, items of value, services, loans, travel, entertainment, hospitality, and

employment. All gifts from registered lobbyists are presumed to be improper, unless the giver is an immediate family member of the person receiving the gift.

A gift worth more than \$150 to a public employee or the public employee's family must be reported within 30 days if:

- ♦ the public employee can take official action that can affect the giver, or
- ♦ the gift is given to the public employee because he or she is a public employee.

The receipt of a gift worth less than \$150 may be prohibited if it could reasonably be inferred that the gift is intended to influence the public employee's action or judgment. Receipt of such a gift should be disclosed.

Any gift received from another government, regardless of value, must be reported; the public employee will be advised as to the disposition of this gift.

*A form for reporting gifts is available at [www.law.state.ak.us/doclibrary/ethics](http://www.law.state.ak.us/doclibrary/ethics) or from the ethics supervisor.*

This restriction on gifts does not apply to lawful campaign contributions.



The Little Theater presents Allen with complimentary season tickets. Allen is reviewing its grant request.



Alexander is negotiating a contract with the SBS Company. At noon, they invite him out for a quick lunch at a nearby deli.



Harriet has been a State auditor for years, and one of her job duties has been to audit the NABB books. One of the company's execs offers to let her stay at the company's condo in Maui for free during her next vacation.



John schedules a field trip to look at a company's mining operations. The company flies up to the site every Monday and offers to fly John up for free. John notifies his ethics supervisor who gives him permission to take the trip.

### **IMPROPER USE OR DISCLOSURE OF INFORMATION (AS 39.52.140)**

No former or current public employee may use or disclose any information acquired from State employment if that use or disclosure could result in a financial or personal benefit to the public employee (or a family member), unless that information has already been disseminated to the public.



Dave just finished reading a comprehensive report on a new technique for tracking animals. The report was prepared by a biologist in his section and has not been reviewed and released by the section supervisor. Dave thought his son, Jerry, who bids on State Fish and Game contracts, might find the report useful and makes a copy for Jerry.



After he leaves State service, Fred responds to a State request for a proposal. He includes in his proposal information on a study the State that did a few years ago. The study is a public record, but has not been published, and its existence is unknown to other applicants.

### **IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES OR LOANS (AS 39.52.150)**

A public employee who can affect the award or administration of a State grant, contract, lease, or loan may not apply for, or have an interest in that State grant, contract, lease, or loan. This prohibition also applies to the public employee's immediate family.

A public employee (or a family member) may apply for or be a party to a *competitively solicited* State grant, contract or lease, if the public employee does not serve in the same administrative unit awarding or administering the grant, contract, or lease *and* so long as the public employee does not take official action in the award or administration of the grant, contract, or lease.

A public employee (or a family member) may apply for and receive a State loan that is generally available to the public and has fixed eligibility standards, so long as the public employee does not take (or withhold) official action affecting the award or administration of the loan.

Public employees must report to their designated ethics supervisor any personal or financial interest (or that of a family member) in a State grant, contract, lease or loan that is awarded or administered by the agency the public employee serves. *A form for this purpose is available at [www.law.state.ak.us/doclibrary/ethics](http://www.law.state.ak.us/doclibrary/ethics) or from the designated ethics supervisor.*



Hal administers contracts for his department. He hasn't seen his daughter for nearly ten years, so he figures that it doesn't matter when she bids for a contract that is being negotiated by his division.



Anne's daughter has been accepted to a college and she is now applying for a loan from the Post Secondary Education Commission. Anne usually evaluates loan applications. She asks her supervisor to assign another loan officer to evaluate

Anne's loan application. When her daughter gets the loan, Anne notifies her designated ethics supervisor in writing of the loan.

### **IMPROPER REPRESENTATION (AS 39.52.160)**

A public employee may not represent, advise, or assist a person for compensation in matters pending before the employee's administrative unit, and may not represent, advise or assist a person for compensation if it is to benefit the employee's personal or financial interest. This section does not allow a public employee to engage in any conduct that would violate a different section of the Ethics Act.

This prohibition does not apply to collective bargaining matters.



Richard works for the department's public information office and is also on the board of the local Audubon Society. The board decides to apply for a public education grant being offered by the department's public information office. They ask Richard to prepare a grant application and to put his name on it as the group's contact person. They figure that Richard knows all the ins and outs and will give them a better shot at the grant.

### **OUTSIDE EMPLOYMENT (AS 39.52.170)**

No public employee may work (paid or unpaid) for a person or organization other than the public employee's own department, if that work is incompatible or in conflict with the proper discharge of official duties.

A public employee must report outside employment or service for which he or she is paid to the designated ethics supervisor. Volunteer service must be disclosed only if it is a potential conflict with State duties or if the employee receives any compensation, including travel or meals. Changes in paid outside employment or services must be reported as they occur. *A form for this purpose is*

available at [www.law.state.ak.us/doclibrary/ethics](http://www.law.state.ak.us/doclibrary/ethics) or from the designated ethics supervisor.



Debby, a State cartographer, works on the weekends for a local ski resort as a member of the ski patrol. She reports this outside employment to her designated ethics supervisor.



Larry is the head of data processing for his department. As part of his job, he evaluates State computer needs. Larry asks that he be excused from heading a study determining which computers to buy for the department because he sells computers in his spare time.

#### **RESTRICTION ON EMPLOYMENT AFTER LEAVING STATE SERVICE (AS 39.52.180)**

For two years after leaving State service, a former public employee may not work on any matter on which the former public employee had personally and substantially participated through official action while employed by the former administrative unit. This prohibition applies to cases, proceedings, applications, and contracts and similar matters.

With the approval of the Attorney General, a Commissioner may waive this prohibition if the Commissioner determines that the public interest is not jeopardized.

This section does not prohibit a State agency from contracting directly with a former public employee.



As a State employee, Andy worked exclusively on road permits for mining companies. After he retires, a mining company wants to hire him to work on the permits for a harbor. He accepts, but states that for two years he will not work on any road permits that he had previously reviewed.

#### **AIDING A VIOLATION PROHIBITED (AS 39.52.190)**

Aiding another public officer to violate this chapter is prohibited.

### **DISCLOSURE PROCEDURES**

#### **NOTIFICATION OF POTENTIAL ETHICAL VIOLATION (AS 39.52.210)**

When a public employee is involved in a situation that may be in violation of AS 39.52.110-190, the public employee must not take official action related to that situation and must immediately disclose the matter in writing to their designated ethics supervisor and the Attorney General. *A form for this purpose is available at [www.law.state.ak.us/doclibrary/ethics](http://www.law.state.ak.us/doclibrary/ethics) or from the ethics supervisor.*

The designated ethics supervisor will provide a written determination to the public employee and the Attorney General of whether a violation may or does exist, and the supervisor may reassign the public employee's duties to avoid the violation (where feasible), or direct the public employee to remove the conflicting personal or financial interest, or find another solution.

#### **ATTORNEY GENERAL'S ADVICE (AS 39.52.240-250)**

Supervisors may request a written advisory opinion from the Attorney General. These opinions are confidential. Versions without identifying information may be made available to the public.

A former public employee may request a written opinion from the Attorney General interpreting the Ethics Act.

#### **REPORTS BY THIRD PARTIES (AS 39.52.230)**

A third party may report a suspected violation of the Ethics Act by a public officer in writing and under oath to the public officer's designated ethics supervisor. The designated ethics supervisor will give a copy to the public employee and to the Attorney General and review the report to determine whether a violation may or does exist. If the designated ethics supervisor determines a violation exists, the

public employee's duties may be reassigned (where feasible), the public employee may be directed to remove the conflicting personal or financial interest, or another solution may be found.

## **COMPLAINTS, HEARINGS, AND ENFORCEMENT**

### **COMPLAINTS (AS 39.52.310-330)**

Any person may file a complaint with the Attorney General about the conduct of a current or former public employee. Complaints must be written and signed under oath. The Attorney General may also initiate complaints from information provided by designated ethics supervisors. A copy of the complaint will be sent to the public employee who is the subject of the complaint and to the Personnel Board.

All complaints are reviewed by the Attorney General. (Alleged violations by the Governor, Lieutenant Governor or the Attorney General are handled by independent counsel appointed by the Personnel Board.) If the Attorney General determines that the complaint does not warrant investigation, the complainant and the public employee will be notified of the dismissal. The Attorney General may refer a complaint to the public employee's designated ethics supervisor for resolution.

After investigation, the Attorney General may dismiss a complaint for lack of probable cause to believe a violation occurred. The complainant and public employee will be promptly notified of this decision.

Alternatively, if probable cause exists, the Attorney General may initiate formal proceedings by serving the public employee with an accusation alleging a violation of the Ethics Act.

### **CONFIDENTIALITY (AS 39.52.340)**

Complaints and investigations prior to formal proceedings are confidential. If the Attorney General finds evidence of probable

criminal activity, the appropriate law enforcement agency shall be notified. If there is evidence of a probable violation of AS 15.13, the Alaska Public Offices Commission will be contacted.

### **HEARINGS (AS 39.52.350-360)**

An accusation by the Attorney General of an alleged violation may result in a hearing. An administrative law judge from the state's Office of Administrative Hearings serves as hearing officer and determines the time, place and other matters. The parties to the hearing are the Attorney General, acting as prosecutor, and the accused public employee, who may be represented by an attorney. Within 30 days of the conclusion of the hearing, the hearing officer files a report with the Personnel Board and provides a copy to the parties.

### **PERSONNEL BOARD ACTION (AS 39.52.370)**

The hearing officer's report will be reviewed by the Personnel Board. The Personnel Board is responsible for determining whether a violation occurred and for imposing penalties. An appeal may be filed by the public employee in the Superior Court.

### **PENALTIES (AS 39.52.410-460)**

All penalties under this law are in addition to discipline that may be imposed by the agency.

The Personnel Board may order a public employee in violation of the Ethics Act to stop engaging in official actions related to the complaint, may order divestiture, establishment of a blind trust, restitution or forfeiture, and may recommend disciplinary action.

If the Personnel Board finds that a former public employee violated the Ethics Act, the Personnel Board will issue a public statement about the case and will ask the Attorney General to pursue appropriate additional legal remedies. The Personnel Board will report to the President of the Senate a violation of the Ethics Act by a public officer who is removable from office only by impeachment.

State grants, contracts, and leases awarded in violation of the Ethics Act are voidable.

Loans given in violation of the Ethics Act may be made immediately payable.

Fees, gifts, or compensation received in violation of the Ethics Act may be recovered by the Attorney General.

The Personnel Board may impose a fine of up to \$5,000 for each violation of the Ethics Act. In addition, a public employee may be required to pay up to twice the financial benefit received in violation of the Ethics Act.

Criminal penalties are in addition to the civil penalties listed above.

## **DEFINITIONS (AS 39.52.960)**

Please keep the following definitions in mind:

**Administrative Unit** - a division or other official subcategory of an agency.

**Agency** - department, public corporations, the University of Alaska, the Alaska Railroad Corporation, and statutorily created boards and commissions.

**Benefit** - anything that is to a person's advantage regardless of financial interest or from which a person hopes to gain in any way.

**Designated Ethics Supervisor** - for employees of a department, the commissioner or the commissioner's designee; for staff of boards or commissions, the executive director of the board or commission.

**Financial Interest** - any property, ownership, management, professional, or private interest from which the employee or a member of the employee's immediate family receives or expects to receive a financial benefit.

**Immediate Family** - spouse; another person cohabiting with the person in a conjugal relationship that is not a legal marriage; a child, including a stepchild and an adoptive child; a parent, sibling, grandparent, aunt, or uncle of the person; and a parent or sibling of the person's spouse.

**Official Action** - advice, participation, or assistance, including, for example, a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer.

**Personal Interest** - the interest or involvement of an employee (or a family member) in any organization or political party from which a person or organization receives a benefit.

For further information and disclosure forms, visit our web site at <http://www.law.state.ak.us/doclibrary/ethics> (Executive Branch Ethics) or please contact:

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